IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 25451 of 2005(E)

PETITIONERS:

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1. **K.K. JOSE,**
   GRADE II WORKER, M.I.SECTION, KODAKARA,
   RESIDING AT KAVALAKKAT VEEDU, THYKUTTAM,
   KALLUR, P.O. ANNAMANADA, PIN-680 741.

2. **T.G. VELAYUDHAN,**
   GRADE II WORKER, M.I. SECTION, CHALAKUDY,
   RESIDING AT THAYIL VEEDU, CHANDANAKUNNU,
   P.O. CHETTIKKULAM, PIN-680 725.

3. **K.UNNIKRISHNAN,**
   GRADE II WORKER, M.I. SECTION, MALA,
   RESIDING AT KANNAMPUZHA VEEDU, AYRANKULAM P.O.,
   PIN-680 734.

4. **SURENDRAN,**
   GRADE II WORKER, M.I.SECTION, CHALAKUDY,
   RESIDING AT MADAYATH VEEDU, VALLOOR P.O.,
   CHERUVALOOR.

5. **C.C. PAULOSE,**
   GRADE II WORKER, M.I. SECTION, CHALAKUDY,
   RESIDING AT CHEENIKAL VEEDU, KADUKUTTY P.O.,
   KADUKUTTY.

6. **T.A. GEORGE,**
   GRADE II WORKER, M.I. SECTION, CHALAKUDY,
   RESIDING AT THANDAPILLY VEEDU, P.O. ERYANKUDY,
   VIA KORATTY, MAMBRA.

7. **M.K. BHASKARAN,**
   GRADE II WORKER, M.I. SECTION, CHALAKUDY,
   RESIDING AT MANGADATH VEEDU, ERAYANKUDY P.O.,
   MAMBRA.

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8. K.V. SURENDRAN,
GRADE II WORKER, M.I.SECTION, CHALAKUDY,
RESIDING AT KOVATT VEEDU, P.O. ELAVOOR,
ANGAMALY VIA.

9. K.V. RAJAN,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT KUNDOLI VEEDU, P.O. ELAJIPRA,
CHALAKUDY VIA.

10. M.A. JOY,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT MALIYAKAL VEEDU, MANDYKUNNU,
P.O. MURINGOOR.

11. P.H. ABDUL HAKKEM,
GRADE II WORKER, M.I. SECTION, MALA,
RESIDING AT PLACKAL VEEDU, P.O. ERAVATHUR,
KOCHUKADAVU, PIN-680 734.

12. P.S. ABDUL NAZAR,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT PLACKAL VEEDU, KOCHUKADAVU,
P.O. ERAVATHUR.

13. P.K. ABDUL HAQUE,
GRADE II WORKER, M.I. SECTION, MALA,
RESIDING AT PANDARAMPARAMBIL VEEDU, P.O. ERAVATHUR
KOCHUKADAVU, PIN-680 734.

14. V.S. NARAYANAN,
GRADE II WORKER, M.I. SECTION, MALA,
RESIDING AT VATTOLI PARAMBIL VEEDU, THUMBARASSERY,
P.O. KUZHOOR.

15. K.C. SUKUMARAN,
GRADE II WORKER, M.I. SECTION, MALA,
RESIDING AT KANICHAPILLI, P.O. MALA, PALLIPURAM,
PIN-680 732.

16. P.D. OUSEPH,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT PLAKKA KOKKATTIL VEEDU, PALLUKARA,
PIN-680 731.

17. A.I. ABBAS,
GRADE II WORKER, M.I. SECTION, MALA,
RESIDING AT AYYARIL VEEDU, P.O. ANNAMANADA,
PIN-680 741.

18. E.K.ASOKAN,
GRADE II WORKER, M.I. SEDTION, MALA,
RESIDING AT ELAYIDATH VEEDU, PALISSERY,
P.O. ANNAMANADA, PIN-680 741.

19. K.A. RAJU,
GRADE II WORKER, M.I.SECTION, CHALAKUDY,
RESIDING AT KALAPARAMBATH VEEDU, PATHADAL,
P.O. ERAYANKUDY.

20. K.A.JOSE,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT KALAPARAMBATH VEEDU, PATHADAL,
P.O. ERAYANKUDY.

21. K.M.JOSEPH,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT KALAPARAMBATH VEEDU, P.O.POOVATHSSERY,
KUMBIDY.

22. P.A.RATHAN,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT PALLITHARA VEEDU, ELAVOOR P.O.,
ANGAMALY VIA.

23. K.T. THOMAS,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT KALLARACKAL VEEDU, P.O. KUTTIKAD,
PIN-680 721.

24. T.K.RAMAKRISHNAN,
GRADE II WORKER, M.I. SECTION, KODAKARA,
RESIDING AT THAYIL VEEDU, P.O. CHENGALLUR,
PUTHUKAD VIA.

25. T.K.RAJAN,
GRADE II WORKER, M.I. SECTION, KODAKARA,
RESIDING AT THAYIL VEEDU, P.O. CHENGALLUR,
PUTHUKAD VIA.

26. K.A. PAUL,
GRADE II WORKER, M.I.SECTION, CHERPPU,
RESIDING AT KANNAMPUZHA VEEDU, P.O. NEDUPUZHA,
THRISSUR-7.

27. K.V. SUDEVAN,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT KORUNADAN VEEDU, P.O. CHETTIKULAM,
CHALAKUDY VIA.

28. K.K.VARGHESE,
GRADE II WORKER, M.I. SECTION, KODAKARA,
RESIDING AT KAVALAKKAT VEEDU, THYKUTTAM,
P.O. ANNAMANAD.

29. C.C. RAJAN,
GRADE I WORKER, M.I. SECTION, PUTHUKAD,
RESIDING AT CHANDRAPURAKAL VEEDU, P.O.EDAMUTTAM,
PIN-680 568.

30. E.K.THILAKAN,
GRADE I WORKER, M.I. SECTION, IRINJALAKUDA,
RESIDING AT EDAKKATTUPARAMBIL P.O., KATTOOR,
PIN-680 702.

31. K.K. PRADEEP CHANDRAN,
GRADE I WORKER, M.I. SECTION, IRINJALAKUDA,
RESIDING AT KANJIRAPARAMBIL VEEDU, P.O.EDATHIRINJI
PIN-680 122.

32. P.V. CHANDRAN,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT PUTHIYEDATH VEEDU, P.O. KADUKUTTY,
CHALAKUDY VIA.

33. N. RAJAN,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
RESIDING AT VALIYAKOLOTHPARAMBU VEEDU, VAIKOM,
THEKKENADA P.O., KOTTAYAM.

34. K.R.SANIL,
GRADE I WORKER, M.I.SECTION, CHALAKUDY,
RESIDING AT KAREKADAN VEEDU, PULANI, P.O. MELOOR.

35. M. SIVARAMAN,
GRADE II WORKER, M.I.SECTION, MALA,
RESIDING AT ODATH VEEDU, VADAMA P.O.,
PATHIYARI VIA, MALA.

36. K.L. ANTONY,
GRADE II WORKER, M.I.SECTION, KODAKARA,
RESIDING AT KALPULLIPARAMBIL VEEDU,
URUMBUKUNNU, KODAKARA P.O.

37. C.K. RAVEENDRAN,
GRADE II WORKER, M.I.SECTION, CHALAKUDY,
CHILLELIPARAMBIL VEEDU, METTYPADAM, P.O. KODASSERY
CHALAKUDY VIA.

38. M.V. AUGUSTHY,
GRADE II WORKER, M.I. SECTION, CHALAKUDY,
MALILYEKKAL VEEDU, P.O. ELANJIPRA,
CHAVUKA, CHALAKUDY.

39. K.K. SUBASH,
GRADE I WORKER, M.I. SECTION, KODUNGALLUR,
RESIDING AT KURUVEETTIL VEEDU, P.O. THANISSERY,
IRINJALAKUDA.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,IRRIGATION DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

2. THE CHIEF ENGINEER (ADMINISTRATION),
IRRIGATION DEPARTMENT, TRIVANDRUM.

3. THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DIVISION, TRICHUR.

BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE G.O.(P) NO.106/85/PW&T DTD. 17/09/85.

EXT.P2: COPY OF THE G.O.(P) NO.6/90/PW&T DTD. 20/01/90.

EXT.P3: COPY OF THE RODER NO.EE1-49461/88 DTD. 8/06/90.

EXT.P4: COPY OF THE REPRESENTATION DTD. 24/08/86.

EXT.P5: COPY OF THE REPRESENTATION DTD. 10/08/90.

EXT.P6: COPY OF THE ORDER NO.17/99/IRD DTD 18/03/99.

EXT.P7: COPY OF THE G.O.(P) NO.11/2000/IRD DTD. 09/02/2000.

EXT.P8: COPY OF THE ORDER NO.E1-884/97 DTD. 20/03/01.

EXT.P8(A): COPY OF CORRECT METHOD OF ORDER NO.E1-884/97 DTD. 20/03/01.

EXT.P8(B): COPY OF THE ORDER DTD. 15/12/299.

EXT.P8(C); COPY OF THE ORDER DTD. 01/11/02.

EXT.P9: COPY OF THE COMMUNICATION NO.E1.364/97 DTD. 29/04/02.

EXT.P10: COPY OF THE CERTIFICATE DTD. 07/06/02 OF K.K.K.JOSE.

EXT.P10(A): COPY OF THE CERTIFICATE DTD. 30/10/02.

EXT.P10(B): COPY OF THE CERTIFICATE DTD. 04/07/02.

EXT.P11: COPY OF THE REPRESENTATION DTD. 15/05/02 PREFERRED BY N.K.BALAN & 3 OTHERS.

EXT.P11(A): COPY OF THE REPRESENTATION DTD. 15/05/02 PREFERRED BY K.K.JOSE & 4 OTHERS.

EXT.P11(B): COPY OF THE REPRESENTATION DTD. 15/05/02 P.K.OUSEPH.

EXT.P11(C): COPY OF THE REPRESENTATION DTD. 15/05/02 PREFERRED BY UNNIKRISHNAN & 13 OTHERS.

EXT.P11(D); COPY OF THE REPRESENTATION DTD. 15/05/02 PREFERRED BY K.A.PAUL.

EXT.P12: COPY OF THE JUDGMENT DTD. 03/06/02 IN O.P.NO.13614/02.

EXT.P13: COPY OF THE ARGUMENT NOTE DTD. 15/11/02.

EXT.P14: COPY OF THE COMMON JUDGMENT DTD. 12/08/92IN O.P.NO. 6586/88, 4181/98 AND 9492/88.

EXT.P14(A); COPY OF THE JUDMENT DTD. 27/05/02 IN O.P.NO.8591/96.

EXT.P15: COPY OF THE G.O.(RT) NO.811/02/WRDDTD.18/09/02.

EXT.P16: COPY OF THE G.O.(RT) NO.89/2003 WRD DTD. 24/01/03.

EXT.P17: COPY OF THE ORDER DTD. 12/11/02 IN CMP.NO.56429/02.

EXT.P18: COPY OF THE PROFORMA PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER M.I.SUB DIVISION, CHALAKUDY IS EVIDENT AS TO THE ENGAGEMENT OF 176 PUMP OPERATORS IN THE SUB DIVISION.

EXT.P18(A): COPY OF THE COMMUNICATION DTD.11/12/02 OF THE CHIEF ENGINEER.

EXT.P18(B); COPY OF THE BILL PREPARED BY THE ASSISTANT ENGINEER MI SECTION, MALA.

EXT.P19: COPY OF THE COMMUNICATION DTD. 24/07/99.

EXT.P20; COPY OF THE JUDGMENTS DTD. 05/08/04 IN OP.NO.9408/03.

EXT.P20(A): COPY OF THE JUDGMENT DTD. 05/08/05 IN WP(C) 17044/03.

EXT.P20(B): COPY OF THE ORDER DTD. 28/09/04.

EXT.P21: COPY OF THE ORDER DTD. G.O.(RT) 135/05/WRD DTD. 03/02/05.

EXT.P22: COPY OF THE EXCERPT OF THE SENIORITY LIST.

EXT.P22(A): COPY OF THE CERTIFICATE OF K.K.SUBHASH.

EXT.P23: COPY OF THE G.O.(RT) NO.1154/2000/IRD DTD. 06/09/2000.

/TRUE COPY/

P.S.TO JUDGE

KSS

Antony Dominic, J.

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W.P(C).No.25451 of 2005

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Dated this the 3rd day of August, 2007.

JUDGMENT

Writ petitioners were CLR workers of the Irrigation Department. According to them, they were discharging duties as Pump Operators. While so, pursuant to Ext.P3, they were absorbed in the category of Worker Grade II and according to them, even thereafter, they continued to discharge the same nature of duties. They have produced Ext.P10 series of certificates in support of their claim that they have got experience in Pump Operator. Referring to Ext.P9, it is pointed out that there were vacancies in the category of Assistant Pump Operator and on realising the same, they submitted Ext.P11 series of representations to the first respondent requesting to appoint them in those vacancies. When these representations did not evoke any response from the first respondent, O.P.No.13614 of 2002 was filed before this Court, which was disposed of by Ext.P12 judgment directing the first respondent to consider

Ext.P11 series of representations. According to them, even in spite of the benefits conferred on similarly situated persons, pursuant to Exts.P14 and P14(a) judgments of this Court, by Ext.P16 oder, first respondent rejected Ext.P11 series of representations. Ext.P16 was again challenged before this Court in O.P.No.9408 of 2003 and W.P.(C) No.17044 of 2003. These cases were disposed of by a learned single Judge of this Court by Ext.P20 judgment quashing the impugned order as reasons were not assigned for holding that the petitioners do not belong to the category of persons, who are the beneficiaries of Exts.P14 and P14(a) judgments of this Court and the consequential order Ext.P15 passed by the Government.

2. Thereafter, petitioners filed representations before the first respondent producing relevant materials to show that they are similarly situated beneficiaries of Exts.P14 and P14(a) judgments of this Court and Ext.P15 order and requesting that their case may be examined and benefits extended. It is stated that in terms of the judgment of the learned single Judge, representations were again made and eventually, by Ext.P21 order, first respondent rejected the claim of the petitioners

holding that they are not identical persons who are covered by Exts.P14 and P14(a) judgments of this Court and Ext.P15 order. It is also stated that the petitioners are not qualified for the post. It is challenging Ext.P21 order and seeking consequential reliefs that this Writ Petition is filed.

3. In this Writ Petition, petitioners mainly contend that there has not been compliance with Ext.P20 judgment of this Court and the petitioners also assert that they are similarly situated persons as the petitioners in Exts.P14 and P14(a) judgments of this Court. On that basis, they claim that they should be appointed in the post of Assistant Pump Operators in which category, sufficient number of vacancies are available. They have a further grievance that in the matter of fixation of their pay, increments have not been reckoned and referring to Exts.P7 and P8 and consequential orders, it is contended that their pay has been erroneously fixed. This contention of the petitioners also has been negatived in paragraph 13 of Ext.P21. It is stated that what is relied on by the petitioners in support of their contention is cases where pay has been erroneously fixed and arrears paid and that action has been taken to recover the

excess amount paid, but the recovery of which has been stayed by this Court in a batch of Writ Petitions.

4. The main two issues that are to be resolved are regarding the entitlement of the petitioners for appointment as Assistant Pump Operators and for refixation of their pay reckoning their increments.

5. In so far as the claim for appointment to the post of Assistant Pump Operator is concerned, counsel refers to Special Rules for the Kerala Engineering Subordinate Service (Lift Irrigation Branch), which shows that the post of Assistant Pump Operator falls in Category II. In terms of the Rules, the post is to be filled up by promotion from Category III, viz., Pump Cleaner in the absence of which by promotion from Category IV, viz. Canal Watcher. Rule further provides that in the absence of qualified hands in either of those two Categories, direct recruitment can be resorted to. For the posts in the Categories of Pump Cleaner and Canal Watcher, qualifications have been prescribed which include pass in Standard VII or equivalent, apart from other qualifications. For direct recruitment also qualifications are specified, which includes both educational as well as technical.

Therefore whatever be the source of recruitment qualifications have been prescribed for the post and unless the petitioners posses these qualifications they cannot aspire for appointment. It is the admitted position that none of the petitioners possesses qualifications specified. If that be so, I do not see any valid reason for the petitioners to lay a claim that they should be appointed to the post of Assistant Pump Operators.

6. Even if vacancies are available, the Appointing Authority can fill up the post only in terms of the Recruitment Rules and so long as the qualifications have been specified in the Recruitment Rules, the Appointing Authority is not bound to accede to any request for departing from the same. When faced with that situation, petitioners made reference to Exts.P14 and P14(a) judgments of this Court. According to the petitioners, those cases involved candidates who were also similarly situated in the sense that they were also not having the prescribed educational qualifications. Though I find justification in the submission made by the petitioners, it appears that absence of qualification was not adjudicated nor any reference has been made to the Recruitment Rules. Thus, absence of qualification is not seen to

have been directly canvassed or decided in those two judgments. In any case an erroneous conferment of a benefit cannot be taken as a precedent. For this reason, the fact that the first respondent by Ext.P15 order implemented Exts.P14 and P14(a) judgments of this Court also does not improve the case of the petitioners in any manner.

7. As regards fixation of pay also, I notice that the petitioners increments have not been reckoned while pay fixation has been carried out. It is seen that in certain cases mistakes committed by the Department have been duly rectified. But such rectification has not been carried out in the case of the petitioners herein. This was one of the issues that was urged before the first respondent in the representation made by the petitioners, which has not been properly considered in Ext.P21. First respondent is seen to have misdirected itself by assuming that the claim of the petitioners is consequential on the pay fixation. It is stated by the first respondent in Ext.P21 that the claim of the petitioners is based on an erroneous pay fixation. It is stated in Ext.P21 that in the case cited by the petitioners erroneous payment was made and that the payment is sought to

be recovered from the employees. This reasoning does not apply to the case of the petitioners and therefore, since the claim of the petitioners for fixation of pay has been turned down in Ext.P13, it cannot be upheld. In view of this position, I make clear that it will be open to the petitioners to raise their claim before the first respondent for refixation of their pay by filing a comprehensive representation in this behalf. It is ordered that if such a representation is filed, the first respondent shall consider the same and pass appropriate orders thereon within a period of three months from the date of such representation.

With this direction, this Writ Petition is disposed of.

Antony Dominic,
Judge.

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